

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

**ERIE COUNTY ENVIRONMENTAL  
COALITION, et. al.,  
Plaintiffs**

**V.**

**MILLCREEK TOWNSHIP SEWER  
AUTHORITY, et. al.,  
Defendants**

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)  
)  
)  
)**CIVIL ACTION NO. 05-59 ERIE**  
)**ELECTRONICALLY FILED**  
)  
)**JUDGE COHILL**  
)

**PLAINTIFFS' MEMORANDUM IN SUPPORT OF ITS MOTION TO STRIKE  
MILLCREEK'S SUR-REPLY BRIEF IN RESPONSE TO SUPPLEMENTAL  
PLAINTIFFS' REPLY TO DEFENDANTS' SUPPLEMENTAL BRIEF IN OPPOSITION  
TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

Plaintiffs Erie County Environmental Coalition, PennEnvironment, and Gaia Defense League (collectively known as “Plaintiffs”) hereby move the Court to strike Millcreek’s “Sur-Reply Brief in Response to Supplemental Plaintiffs’ Reply to Defendants’ Supplemental Brief in Opposition to Plaintiffs’ Motion For Summary Judgment” and accompanying exhibit, filed by defendants Millcreek Township Sewer Authority, et al. ("Millcreek") on April 27, 2007 ("Millcreek’s Sur- Reply").

## BACKGROUND

This case arises out of violations of the Clean Water Act by Millcreek Township Sewer Authority and Millcreek Township for illegally discharging raw and/or untreated sewage into Walnut Creek without a permit. Both parties filed cross-motions for Summary Judgment on March 31, 2006. The briefing on the dispositive motions concluded on May 5, 2006. On February 8, 2007, Millcreek filed a Motion to Supplement Defendants' Motion for Summary Judgment and Defendants' Response to Plaintiffs' Motion for Summary Judgment. On February

15, 2007 the Court granted Millcreek's Motion and Millcreek filed its supplemental brief on February 16, 2007. On February 20, 2007, Plaintiffs filed a Motion for Leave to File Supplemental Plaintiffs' Response to Summary Judgment, which the Court granted on February 21, 2007. On April 4, 2007, within the timeframe of the Court's Order, Plaintiffs filed a Supplemental Response Brief in Opposition to Defendants' supplemental brief.

**I. PLAINTIFFS REQUEST THIS COURT TO STRIKE MILLCREEK'S SUR-REPLY IN RESPONSE TO PLAINTIFFS' SUPPLEMENTAL RESPONSE**

Millcreek's April 27 Sur-Reply should be stricken because it was filed in violation of Local Rule 56.1(E) or Defendants failed to seek appropriate leave from the Court. The Local Rules clearly state, "Within 15 days of service of the opposing party's submission in opposition to the motion for summary judgment, the moving may reply to the opposing party's submission." W.D. Pa. Loc. R. 56.1(E). Here, Millcreek filed a reply brief approximately 23 days after Plaintiffs' Court-approved Response, therefore Millcreek's Sur-reply should be stricken for failure to comply with the Local Rules.

Additionally, Millcreek failed to seek leave of the court and demonstrate a showing of good cause prior to filing its' April 27 Sur-Reply. If the supplemental briefing process is outside the rubric of the traditional summary judgment process contemplated by Local Rule 56.1, then Defendants were required to seek leave from the Court in order to file additional pleadings. Defendants sought leave to file its supplemental brief and Plaintiffs sought leave to file its response thereto. However, Millcreek failed to seek leave from the Court to file its April 27 Sur-reply. Even if Millcreek seeks leave at this point, the Court should deny such a request as being untimely because it comes so long after Plaintiffs' response. Such a tactic is fundamentally unfair after the parties had sought appropriate leave to file the other supplemental briefs and sought to do so in a timely manner. Because Millcreek's April 27 Sur- Reply is in violation of

the Local Rules and Millcreek failed to seek leave, this Court should strike the April 27 Sur-Reply.

**CONCLUSION**

For the reasons set forth above, the Court should strike Millcreek's April 27 Sur-Reply.

Respectfully submitted,

s/ Jennifer A. Murphy

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Attorney for Plaintiffs

**CERTIFICATE OF SERVICE**

I hereby certify that I filed the foregoing document by electronic means utilizing the Court's CM/ECF system that will serve notice of electronic filing to Mark J. Shaw, Esq., McDonald, Illig, Jones & Britton, LLP, Attorney for Defendants on this 1st day of May, 2007.

/s/ Jennifer A. Murphy  
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